

1 fixed moment in time?

2 Q Yes, sir. Turn to Page 7 of your pre-file
3 written direct testimony. The last sentence says,
4 "Thus in the field and in reality, whether a pole is
5 genuinely at full capacity does not depend on the
6 condition of a pole at a fixed moment in time." That
7 rolls over to the top of Page 8. Did I read that
8 portion of that sentence correctly?

9 A You read that correctly. But my answer
10 was that you can determine if make-ready is required.
11 Did you ask me if I could determine if full capacity
12 has been reached?

13 Q I think I did.

14 A If full capacity has been reached, then I
15 would refer you back to my reasonable definition of a
16 pole at full capacity.

17 Q Yes, sir. What I'm trying to ascertain is
18 whether or not I can go out in the field and look at
19 a pole at a fixed moment in time and just look at one
20 pole and determine whether that stick of wood is at
21 full capacity. Can I do that?

22 A We've gone over this a number of times and

1 --

2 Q Not today, we have not, Mr. Harrelson.

3 JUDGE SIPPEL: Can you answer his question?
4 Can you do it or not? And then, you can explain your
5 answer.

6 THE WITNESS: You can do that.

7 JUDGE SIPPEL: With what qualifiers?

8 THE WITNESS: All right. The question is
9 can you determine if a pole is at full capacity at a
10 fixed moment in time. And you can, but you have to
11 consider the lines that leave the pole, and you have
12 to consider whether or not the pole can be changed to
13 a taller pole.

14 MR. CAMPBELL: Okay. Yes, sir. That's
15 exactly where I want to get to, and I'm going to walk
16 up here to the screen.

17 BY MR. CAMPBELL:

18 Q This pole here, this stick of wood that is
19 in the ground at a certain location, you went and
20 looked at it. Correct?

21 A Yes.

22 Q And if you need to refer to Exhibit 42,

1 not Exhibit 42, excuse me, Exhibit 6 to your
2 testimony, which you have already tendered in this
3 case. Do you have a copy of that, Mr. Harrelson?

4 A I don't.

5 JUDGE SIPPEL: Can you help me, Mr. Seiver?

6 MR. SEIVER: Gladly.

7 MR. CAMPBELL: Mr. Seiver, do you have an
8 extra copy of Exhibit 6?

9 MR. SEIVER: Yes, I do.

10 THE WITNESS: Which page?

11 MR. CAMPBELL: Pole Number 28, please, sir.

12 JUDGE SIPPEL: Is that the one that's up on
13 the screen?

14 MR. CAMPBELL: Yes, sir.

15 THE WITNESS: I don't have it marked as
16 Pole 28, though.

17 MR. CAMPBELL: Yes, sir. You have an
18 individual sheet, your Exhibit 6 that is pole
19 specific, Pole Number 28. And you have a description
20 with measurements. It's not paginated. I'm sorry.
21 I didn't paginate it. I thought we did.

22 MR. SEIVER: It is paginated. I'm sorry.

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1 MR. CAMPBELL: Do you have another copy?

2 THE WITNESS: All right. It's Page 106.

3 JUDGE SIPPEL: Whose Exhibit 6 is this?

4 MR. SEIVER: Complainant's, Your Honor.

5 JUDGE SIPPEL: Thank you.

6 BY MR. CAMPBELL:

7 Q We're looking at Page 106, Complainant's
8 Exhibit 6. Specifically, this is your Exhibit 6 you
9 identify in your pre-trial written direct testimony.
10 Correct?

11 A Yes.

12 Q And Exhibit 6, by the way, why don't you
13 just go ahead and describe what that is, Mr.
14 Harrelson?

15 A Exhibit is photographs of Gulf's 50 poles
16 selected for this matter with notes that I made with
17 respect to each pole.

18 Q Yes. And that's your analysis on each of
19 those poles. Correct?

20 A It's an analysis of sorts, Yes.

21 Q And on each of the poles, you identify
22 whether in your opinion that pole is at full capacity

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1 or not at full capacity. Correct?

2 A I believe I do.

3 Q And in each instance, all 50 of the poles
4 that were identified in Exhibit 6 by Gulf Power, you
5 will find none of them are at full capacity. Correct?

6 A That's correct.

7 Q All right. Now, looking at this
8 particular pole, Pole Number 28, am I accurate, Mr.
9 Harrelson, that your conclusion is that in order to
10 accommodate an additional attacher, this pole would
11 have to be taken out of ground, retired from service
12 and a taller pole put in place?

13 A Yes. That's not a detailed engineering
14 design. I didn't do make-ready engineering on these.
15 But that, I think, is very strong likelihood that that
16 particular pole should be replaced.

17 Q Yes, sir. On Exhibit 6, you didn't say a
18 very strong likelihood. Your conclusion was, and tell
19 me if I'm reading this incorrectly, "The pole will
20 need to be changed out to accommodate additional
21 attachments." Is that your testimony here today, sir?

22 A That's correct. I just wanted you to know

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1 that I didn't do an engineering analysis to reach that
2 conclusion.

3 Q But in order to understand the parameters
4 of your definition of when a pole is at full capacity,
5 I want to be sure I have this clear. Even though this
6 pole, Pole Number 28, would have to be taken out of
7 the ground and a new pole put in place, this pole, the
8 one that's taken out of the ground and retired from
9 service, in your opinion, was not at full capacity.

10 A No. I didn't define "pole" as an
11 individual stick of wood. "Pole" is an element of a
12 power line.

13 Q But this pole, in order to determine
14 whether this pole is at full capacity, it's your
15 definition that we don't just look at this pole.
16 Correct?

17 A But what we're doing is using two
18 definitions of poles. And that piece of wood, being
19 commonly referred to as a pole, is probably full. And
20 a reasonable engineering approach would be to put a
21 taller pole in that pole location.

22 So as you use the word pole in that

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1 context, you have two different meanings. One is the
2 piece of wood that's coming out; the other is the
3 element of the distribution line, which is the pole.

4 Q And the pole that's coming out of the
5 ground with wires attached to it, in a certain
6 condition at a fixed moment in time, that's what's
7 commonly understood as a pole. Correct?

8 A Well, I don't know what's commonly
9 understood. I do know that the deliberations in this
10 case requires a definition for poles at full capacity.

11 Q You've testified in accident cases before,
12 correct, Mr. Harrelson?

13 A Yes.

14 Q That involves situations where a car might
15 run into a utility pole. Correct?

16 A Yes.

17 Q When it does, it runs into a pole at a
18 fixed moment in time, doesn't it?

19 A If that's the scenario, that's true.

20 Q Yes, sir. It doesn't run into some
21 future, hypothetical pole. It runs into a real pole
22 at a given location. Right?

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1 A Yes.

2 Q And in those cases where you're talking
3 about that, you're talking about a utility pole as it
4 existed in a fixed moment in time. Right?

5 A And we're talking about a road wreck.

6 Q Yes, sir.

7 A I agree.

8 Q In this case, you want to have a different
9 definition of pole. Correct?

10 A Well, two definitions to be able to
11 communicate.

12 JUDGE SIPPEL: Wait a minute. The witness
13 has been asked and answered that question. His answer
14 to me is -- for what it's worth, it is clear on the
15 record.

16 MR. CAMPBELL: Now, if I'm also correct,
17 could you go to Pole 29, please, Katy.

18 JUDGE SIPPEL: What page might that be?

19 MR. CAMPBELL: I guess it would be page
20 107, 108 --

21 THE WITNESS: 110. 110.

22 MR. CAMPBELL: 110.

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1 JUDGE SIPPEL: Thank you. Okay. 110 of
2 Complainant's Exhibit 6.

3 MR. CAMPBELL: Now, on this pole --

4 THE WITNESS: Actually, 111 is the photo.

5 MR. CAMPBELL: Okay. So go to Page 111,
6 then.

7 JUDGE SIPPEL: Thank you.

8 THE WITNESS: She's not there yet.

9 MR. ESTES: They didn't give us the page
10 numbers, so we don't have the page numbers.

11 THE WITNESS: Next page.

12 JUDGE SIPPEL: Do you have pole numbers?

13 MR. ESTES: We've got pole numbers, but we
14 don't have page numbers.

15 JUDGE SIPPEL: Mr. Campbell, do you know
16 what pole number?

17 MR. CAMPBELL: Pole Number 29. Hold on.
18 I think I can make this go a little faster maybe.

19 BY MR. CAMPBELL:

20 Q Now, again, just testing the parameters of
21 your definition here to be sure that I understand, on
22 the previous pole, that pole was not at full capacity

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1 because we could take it out of the ground and put a
2 different pole in its place. Correct?

3 A Correct.

4 Q This pole is not at full capacity because
5 although there isn't room to accommodate another
6 attacher right now, you can rearrange the facilities,
7 the old facilities in a way that you think can
8 accommodate the other attacher. Correct?

9 A Yes.

10 Q And that's the different iteration of your
11 definition of a pole at full capacity. Correct?

12 A Yes. On this pole in particular, this is
13 a good illustration of the diagram that was
14 introduced, the demonstrative that showed the power
15 space, the communications workers' safety zone, and
16 the one-foot for cable and the three-feet contracted
17 to BellSouth. And that information was brought up
18 after my depositions about the supply space, you know,
19 the demonstrative aid, and the diagrams that I had
20 used to put these positions on here.

21 That street light on this particular pole
22 was added to this pole way down into the

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1 communications workers' safety zone, and created the
2 violation on this pole that makes it require make-
3 ready.

4 MR. CAMPBELL: Your Honor, I'm going to
5 move to strike the answer as being non-responsive to
6 the question. And I think what's happening here is we
7 have a witness trying to open the door to the
8 information that his lawyer wants to get in that was
9 dropped on us today.

10 I didn't ask him about that. I'm asking
11 about the definition of crowded and where this pole
12 has to be rearranged. And I get a non-responsive
13 answer that's trying to relate that information.

14 MR. SEIVER: I'm at a loss here. He's not
15 testifying from his notes. And the notes are only
16 what the Osmose is. If Mr. --

17 JUDGE SIPPEL: Now, wait a minute. The
18 notes aren't even in play here. Wait. Whoa.

19 Mr. Campbell says that he didn't answer
20 the question as it was asked. He went beyond the
21 scope of the question that was asked on cross-
22 examination. In which case, Mr. Campbell should have

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1 spoken up and alerted me to that, and I would have
2 ruled while he was talking.

3 But I'm going to take your objection at
4 face value. And I will assess whether or not the
5 witness had responded to your question. And I have to
6 look at it and find. I'm not sure whether or not I
7 can move that swiftly to strike something as non-
8 responsive.

9 He might have heard your question a way
10 differently than you had intended him to hear it.
11 Let's move on.

12 MR. CAMPBELL: Yes, Your Honor.

13 BY MR. CAMPBELL:

14 Q What did you do to date the relative
15 placement of the communications cable on this
16 streetlight, Mr. Harrelson?

17 A I looked at the appearance of the
18 streetlight bracket and the connecting wires from the
19 streetlight bracket to the pole grounds. And they
20 have a new shiny appearance relative to the other
21 materials on that pole. The streetlight fixture
22 itself is a current vintage streetlight.

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1 Q What did you do to date the sheeting on
2 the communications cable?

3 A It's just an experienced-based judgement
4 based on the neighborhood that that's in and the
5 appearance of the facilities.

6 Q You didn't date the cable, did you, Mr.
7 Harrelson?

8 A Only by an estimate based on my
9 experience.

10 JUDGE SIPPEL: I just want to caution the
11 witness to listen to the question carefully. You were
12 fine on the last one, but don't go expanding your
13 answer beyond what you're asked. Don't volunteer
14 anything, if I may ask you.

15 You will get to explain if you want to
16 explain your answer. Let me know you want to explain.
17 You'll also get another chance on redirect. But I do
18 want to give you a chance to explain at the time that
19 you're testifying. But first of all, just answer the
20 question.

21 Mr. Campbell, next question?

22 BY MR. CAMPBELL:

1 Q I think I've asked this question. I'm not
2 sure, though, so I need to ask it again. Is your
3 testimony, Mr. Harrelson, that you can't do a capacity
4 analysis on a pole by pole basis?

5 A I think where the confusion is, your
6 answer is yes, I can do a capacity analysis on a pole
7 by pole basis. The confusion is you keep asking
8 questions about "that stick of wood."

9 And so a capacity analysis can be made on
10 a pole by pole basis, but not without considering the
11 adjacent spans and the adjacent poles. It is a pole
12 by pole analysis, but it is not made by only looking
13 at that individual pole.

14 JUDGE SIPPEL: I'm sorry to interrupt. I
15 just have one clarifier. I'm not intending to muddy
16 the waters here. But in order to do a full pole
17 capacity analysis, can you do that without making a
18 loading analysis?

19 THE WITNESS: It's generally done without
20 a detailed loading analysis because of experienced-
21 based tables that are very helpful in deciding if a
22 pole is likely to be overloaded.

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1 JUDGE SIPPEL: Well, let me ask you this,
2 then. Why except in a situation like this case
3 obviously for reasons that the Eleventh Circuit gave,
4 why in the course of business would you be wanting to
5 make an assessment of pole by pole analysis for full
6 capacity?

7 THE WITNESS: I believe that the analysis
8 must boil back down, ultimately, to an engineer's
9 decision if a pole had --

10 JUDGE SIPPEL: No. That's not my question.
11 Why would you do it? Why would you bother doing it?

12 If I was the utility company, why would I
13 call you up and say, "Mr. Harrelson, would you come
14 over next week and start doing a pole by pole analysis
15 of all of our poles to see if they're in full
16 capacity?" Except for the fact that there's a court
17 decision affecting this, why would you want to do
18 that?

19 THE WITNESS: Well, I think all of these
20 100 examples that have been chosen clearly
21 demonstrates that there are code violations --

22 JUDGE SIPPEL: No, no, no. We're not into

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1 code violations. That's not it. That's not it. My
2 question is a very simple one. Why, if I were a
3 utility company, would I care about whether or not my
4 poles were at full capacity to the point that I would
5 be retaining an engineer to come over and give me that
6 kind of an assessment, unless I'm in a law suit.

7 THE WITNESS: I think it has to do with
8 compliance with the safety code, which utilities are
9 required, and require the attachers to comply with.
10 That's what I think.

11 JUDGE SIPPEL: All right. Then if you did
12 a survey of a utility distribution-wide, let's say for
13 safety compliance purposes, would you also, in the
14 connection with doing that, be making a determination
15 as to whether or not the pole was at full capacity or
16 not?

17 THE WITNESS: Not for that purpose, but
18 yes. If the pole cannot be rearranged or replaced
19 such that it's not at full capacity, then something
20 has to come off the pole.

21 JUDGE SIPPEL: So in that context -- I'm
22 sorry. Go ahead. Finish it.

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1 THE WITNESS: If it cannot satisfy the
2 requirements of the National Electrical Safety Code
3 and whatever reasonable requirements the utility has,
4 then that pole violates the National Electric Safety
5 Code. And I think it's a uniform goal of the entire
6 utility industry, electric and communications, to
7 comply with the National Electric Safety Code.

8 JUDGE SIPPEL: I understand that answer,
9 but I'm not quite with you yet in terms of why that
10 has to be a determination of full capacity. If you're
11 examining a series of poles for compliance, to be sure
12 that the utility owner is in compliance with the
13 safety laws, you outlined generally what you would
14 have to do. But why would the concept of full
15 capacity come into that kind of an examination?

16 THE WITNESS: I don't think it has been
17 important before to define full capacity.

18 JUDGE SIPPEL: Thank you. Thank you.
19 Okay. But for purposes for what you've done here, you
20 have determined full capacity and you feel comfortable
21 in what you have done without having taken it to the
22 next step, which would be the loading analysis, which

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1 would really be a finite, a very narrow description of
2 exactly what that pole is all about.

3 THE WITNESS: It's an additional required
4 estimation or calculation.

5 JUDGE SIPPEL: What is? The loading?

6 THE WITNESS: The loading analysis.

7 JUDGE SIPPEL: Yes. What would prompt the
8 utility company to have you do a loading analysis?
9 What event or what plans would prompt that?

10 THE WITNESS: It would be if there's a new
11 requirement such as what's being considered in Florida
12 now, as I understand, for additional strengthening of
13 the lines due to --

14 JUDGE SIPPEL: Hurricanes.

15 THE WITNESS: Well, due to the legislation,
16 which is a response to the hurricanes. Yes, sir.

17 JUDGE SIPPEL: Legislation is worse than a
18 hurricane sometimes.

19 (Laughter)

20 JUDGE SIPPEL: All right. You've explained
21 it to me. I just wanted to get a context on what this
22 is all about. I'm sorry, Mr. Campbell, go ahead.

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1 BY MR. CAMPBELL:

2 Q And I want to be clear before we leave
3 this issue that you have not performed that loading
4 analysis on any of these poles?

5 A Not a detailed loading analysis.

6 Q Yes, sir. So you wouldn't sit there as a
7 professional engineer under oath and render an opinion
8 on any one of these poles with respect to whether
9 additional loading considerations would be impacted by
10 adding another communications cable to a pole?

11 A No.

12 Q Could you turn please, sir, to Page 8 of
13 your pre-file written direct testimony?

14 A I'm there.

15 Q At the bottom of Page 8, you're referring
16 to the Osmose statement of work. Correct? Beginning
17 at Line 19.

18 A Yes.

19 Q And you state that "Osmose equates a full
20 capacity pole with a crowded pole." Did I read that
21 correctly?

22 A Yes.

1 Q I take it that's not a compliment of
2 Osmose?

3 A I'm just trying to state fact.

4 JUDGE SIPPEL: Wait for him to ask the
5 question.

6 MR. CAMPBELL: Well, it's phrased a little
7 vaguely. I want to be clear here.

8 BY MR. CAMPBELL:

9 Q You're being critical of their equating
10 crowded and full capacity. Correct?

11 A No, I'm not. I'm just trying to state a
12 fact.

13 Q Do you disagree with that?

14 A My assumption was that I didn't want to
15 have to deal with two different terms if I didn't have
16 to, and I decided that I did not have to and that I
17 chose the one that Mr. Seiver had discussed with me as
18 being perhaps more appropriate. So I picked one. I
19 didn't want to have to distinguish between crowded and
20 full capacity.

21 Q Yes, sir. And you picked full capacity,
22 correct?

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1 A That's correct.

2 Q And that was the term Mr. Seiver wanted
3 you to use, correct?

4 A He didn't tell me that I couldn't.

5 Q You're not here to offer any opinion about
6 whether a pole is crowded, correct?

7 A No.

8 Q Just whether it's at full capacity.
9 Right?

10 A Right.

11 Q And you have no opinion whether or not
12 crowded means the same thing as full capacity. Right?

13 A I do not.

14 JUDGE SIPPEL: Can I ask a question, not of
15 the witness, just of both counsel. I'll put it in the
16 form of a hypothetical right now. But would both
17 parties be willing to stipulate that any pole which is
18 at full capacity incorporates the concept of being
19 crowded, in other words, from the greater to the
20 lesser. If you're full capacity, you must be crowded.

21 MR. CAMPBELL: Your Honor, we think that
22 they mean the same thing. The reason we have to spend

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1 time on this distinction -- you heard Ms. Kravtin's
2 testimony -- is they are creating a distinction
3 between the two terms. I understand why they're doing
4 it, but we're trying to establish that there isn't a
5 practical distinction. And I'm going to go a line of
6 inquiry with this witness to show that he doesn't
7 either.

8 JUDGE SIPPEL: All right. That wasn't my
9 question anyway. I was not trying to say you would
10 equate them. It just seems to me that if you say
11 something is at full capacity, the inference is it's
12 almost implicitly established that it's crowded.

13 MR. CAMPBELL: Gulf Power Company agrees.

14 MR. SEIVER: Your Honor, since I don't know
15 what crowded means except in the kind of basic sense
16 in when we talk about an elevator being crowded.

17 JUDGE SIPPEL: That's what I'm talking
18 about.

19 MR. SEIVER: But I can't necessarily agree
20 that a pole that might be at full capacity is crowded
21 because it could have only one attachment on it. And
22 for some reason, that could be at full capacity. Yet

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1 the point that I thought Mr. Campbell was going to
2 move to is that Your Honor in an order, I think, about
3 a year ago had directed us to quit using the word
4 crowding. It's an ambiguous term, and just use the
5 term full capacity.

6 JUDGE SIPPEL: Well, I'm not going to tell
7 you to do anything differently than what the Eleventh
8 Circuit has been doing, but these words have been
9 bandied about in that decision. You know, that's one
10 of the issues that's going to have to be decided in
11 this case if it can be.

12 MR. COOK: Your Honor, if I could clarify
13 my colleague's comment, in your status order,
14 specifically of April 15, 2005, you found that
15 crowding was an ambiguous term and said, "I read the
16 Eleventh Circuit's opinion to require proof of full
17 capacity." And from that point on, we have focused on
18 full capacity.

19 MR. CAMPBELL: What was the date of that
20 order, Mr. Cook?

21 MR. COOK: April 15, 2005, status order.

22 MR. CAMPBELL: So a month after.

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1 MR. LANGLEY: Your Honor, that came about
2 because they had decided in March of 2005 that they
3 didn't like the potential distinction between crowded
4 and full capacity. So in numerous and voluminous
5 filings, they attempted to convince Your Honor, early
6 on before there was a factual record, that there was
7 a distinction. That's what's happening here.

8 JUDGE SIPPEL: Well, whatever I wrote, I
9 wrote. Obviously, I'm stuck with whatever I wrote at
10 the time that I wrote it. But I'm putting the parties
11 on notice now, that if it wasn't accepted earlier,
12 that this case is going to be decided based on what
13 the Eleventh Circuit said and what the subsequent
14 commission order or the related commission order and
15 particularly the hearing designation order in this
16 case.

17 What I was trying to do with those
18 scheduling orders and non-discovery orders was to keep
19 everything focused on what I thought were going to be
20 tryable issues. But it was, again, for purposes of
21 trying to just narrow things like discovery and to get
22 things moving. Things weren't moving too fast in

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1 those days.

2 So, you know, that issue is in this case.
3 Which of those standards apply under the laws that I
4 have cited, the cases I have cited, full capacity
5 and/or crowded. And we'll decide it when we decide
6 it.

7 But anyway, I was trying to get a
8 clarification in my own mind just from the standpoint
9 of what would be the general understanding of full
10 capacity vis-a-vis crowded. And both sides have given
11 me your reasons, and I understand what you're saying,
12 Mr. Seiver, it isn't all of that inclusive, at least
13 not in the context of what we're doing here today.
14 Thank you.

15 BY MR. CAMPBELL:

16 Q Going back to the previous answer, I think
17 you agree that you don't have an opinion sitting here
18 today of whether crowding and full capacity mean the
19 same thing, correct?

20 A That's correct. I have not attempted to
21 define crowded, investigate crowded. I just focused
22 on the one term, full capacity.

NEAL R. GROSS

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